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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/733,387	
	Filing Date	Dec 7, 2000	
	First Named Inventor	Donoho, Gregory	
	Art Unit	1646	
	Examiner Name	Li, Ruixiang	
Total Number of Pages in This Submission	3	Attorney Docket Number	LEX-0104-USA

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): - Return Postcard - Petition Requesting Withdrawal of Abandonment
Remarks		Customer # 24231

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Lexicon Genetics Incorporated Lance K. Ishimoto Reg. No. 41,866
Signature	<i>Lance K. Ishimoto by David W. Huber</i> <i>DAVID W. HUBER</i> <i>REG. NO. 41,071</i>
Date	August 26, 2004

CERTIFICATE OF TRANSMISSION/MAILING			
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop: Petition, USPTO, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.			
Typed or printed name	Michelle Klein		
Signature	<i>Michelle Klein</i>	Date	August 26, 2004

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant(s):	Donoho <i>et al.</i>	Group Art Unit: 1646
Application No.:	09/733,387	Examiner: R. Li
Filed:	12/07/2000	Atty. Dkt. No.: LEX-0104-USA
Title: Novel Human Membrane Proteins and Polynucleotides Encoding the Same		

PETITION UNDER 37 C.F.R. § 1.181(a)
REQUESTING WITHDRAWAL OF HOLDING OF ABANDONMENT

Commissioner for Patents
Mail Stop Petition
Alexandria, VA 22313

Sir:

Appellants acknowledge the receipt of the Notice of Abandonment mailed on July 26, 2004 ("the Notice"), in which the Examiner indicates that the present application has been abandoned because "(t)he decision by the Board of Patent Appeals and Interference rendered on 07/01/2004 and because the period for seeking court review of the court decision has expired" (the Notice at page 1, box 6). Appellants request the withdrawal of the holding of abandonment, as "the period for seeking court review of the court decision", or the period for requesting rehearing, have **not** expired, as discussed in detail below.

Pursuant to 37 C.F.R. § 1.181(f), the deadline for filing the present Petition is September 26, 2004, which falls on a Sunday and is therefore extended until Monday, September 27, 2004 under 37 C.F.R. § 1.7. The Petition is thus timely filed. Appellants believe no fees are due in connection with this Petition. However, the Commissioner is authorized to charge any required fees or credit any overpayment to Deposit Account No. 50-0892.

REMARKS

On July 1, 2004, the Board of Patent Appeals and Interferences issued a decision on the Appeal in the above-referenced case (Appeal No. 2004-1103), which finally rejected claims 1-3

and 6-7. As clearly set forth in 37 C.F.R. § 1.197, following the decision by the Board of Patent Appeals and Interferences, “Appellant may file a single request for rehearing within **two months** from the date of the original decision” (37 C.F.R. § 1.197(b), emphasis added). Additionally, as clearly set forth in 37 C.F.R. §§ 1.302, 1.303, and 1.304, following the decision by the Board of Patent Appeals and Interferences, “(t)he time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is **two months** from the date of the decision of the Board of Patent Appeals and Interferences” (37 C.F.R. § 1.304(a)(1), emphasis added). Therefore, “the period for seeking court review of the court decision”, and the period for requesting rehearing, expires **two months** from the date of the decision of the Board of Patent Appeals and Interferences (July 1, 2004), which is on **September 1, 2004**. Thus, the Examiner’s allegation that “the period for seeking court review of the court decision has expired”, as set forth in the Notice, is completely and totally without merit. Appellants therefore respectfully request the withdrawal of the holding of abandonment in the present case.

Respectfully submitted,

August 26, 2004

Date



David W. Hibler
Agent for Appellants

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